

1 SENATE BILL 313

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Phil A. Griego

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10 AN ACT

11 RELATING TO PUBLIC PROPERTY; CREATING THE SURPLUS PROPERTY
12 BUREAU; PROVIDING POWERS AND DUTIES; CREATING A FUND;
13 AUTHORIZING STOREFRONT SALES OF SURPLUS PROPERTY; AMENDING,
14 REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN
15 APPROPRIATION.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 Section 1. A new section of Chapter 13, Article 6 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] SURPLUS PROPERTY BUREAU CREATED--DUTIES--
21 POWERS.--

22 A. The "surplus property bureau" is created in the
23 transportation services division of the general services
24 department. The surplus property bureau is designated as the
25 New Mexico agency responsible for distribution of federal

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1 surplus personal property, excepting food commodities, in
2 accordance with subdivision (j) of Section 203 of the Federal
3 Property and Administrative Services Act of 1949. The surplus
4 property bureau is also designated as the agency for
5 distribution or disposal of state surplus property.

6 B. The surplus property bureau shall:

7 (1) develop a detailed state plan of operation
8 for the management and administration of surplus property
9 acquired from the federal government that complies with the
10 Federal Property and Administrative Services Act of 1949 and
11 regulations promulgated in accordance with that act;

12 (2) cooperate with the federal government
13 and its agencies in securing the expeditious and equitable
14 distribution of federal surplus personal property, excepting
15 food commodities, to eligible institutions in New Mexico, and
16 assist those institutions in securing that property;

17 (3) dispose of unusable federal surplus
18 property in accordance with subdivision (j) of Section 203 of
19 the Federal Property and Administrative Services Act of 1949;
20 and

21 (4) manage a program to recycle, donate, sell
22 or dispose of state surplus tangible personal property.

23 C. The surplus property bureau may:

24 (1) enter into agreements with the federal
25 government or its agencies for the purchase, lease, receipt as

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1 a loan or gift or any other means of acquisition of any real or
2 personal property without regard to provisions of state law
3 that require:

4 (a) the posting of notices or public
5 advertising for bids;

6 (b) the inviting or receiving of
7 competitive bids; or

8 (c) the delivery of purchases before
9 payment;

10 (2) enter into cooperative agreements for the
11 sale, transfer or disposal of federal surplus property that has
12 not been distributed;

13 (3) enter into contracts with other state
14 agencies for the purpose of acquiring or disposing of any
15 tangible personal property originally purchased with state
16 money as specified by rule of the transportation services
17 division of the general services department; and

18 (4) designate the representative of a user to
19 enter a bid at a sale of real or personal property owned by the
20 United States government or any agency or department thereof
21 and authorize that person to make payment required in
22 connection with the bidding."

23 Section 2. A new section of Chapter 13, Article 6 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] SURPLUS PROPERTY FUND--CREATED--

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1 EXPENDITURES.--

2 A. The "surplus property fund" is created as a
3 nonreverting fund in the state treasury. The fund consists of
4 money received from the sale of surplus property by the surplus
5 property bureau of the transportation services division of the
6 general services department. The surplus property bureau shall
7 administer the fund, and money in the fund is appropriated to
8 the bureau to carry out activities relating to the acquisition,
9 transfer and sale of surplus government property. Money in the
10 fund shall be disbursed on vouchers approved and warrants
11 signed by the director of the transportation services division
12 of the general services department or the director's authorized
13 representative.

14 B. Money in the surplus property fund attributable
15 to the sale of federal property shall be held and accounted for
16 separately from money attributable to the purchase or sale of
17 state property."

18 Section 3. A new section of Chapter 13, Article 6 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] DISPOSITION OF STATE PROPERTY.--The
21 surplus property bureau of the transportation services division
22 of the general services department may dispose of tangible
23 personal property, except property acquired from the United
24 States government, by advertising the availability of the
25 property as follows:

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1 A. for the first forty-five-day period, to any
2 agency that has entered into an agreement with the bureau;

3 B. for the second forty-five-day period, to any
4 agency or tax-exempt entity that has filed its written
5 certificate of tax exemption with the bureau;

6 C. for the third forty-five-day period, to any
7 agency or tax-exempt entity or to the public through a
8 storefront operation on days and at times specified by rule of
9 the bureau; and

10 D. after the third forty-five-day period, by
11 auction or any other means of disposal in compliance with
12 environmental standards for disposal of tangible personal
13 property."

14 Section 4. Section 13-6-1 NMSA 1978 (being Laws 1961,
15 Chapter 100, Section 1, as amended) is amended to read:

16 "13-6-1. DISPOSITION OF OBSOLETE, WORN-OUT OR UNUSABLE
17 TANGIBLE PERSONAL PROPERTY.--

18 A. The governing authority of each state agency,
19 local public body, school district and state educational
20 institution may dispose of any item of tangible personal
21 property belonging to that authority and delete the item from
22 its public inventory upon a specific finding by the authority
23 that the item of property is:

24 (1) of a current resale value of five thousand
25 dollars (\$5,000) or less; and

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1 (2) worn-out, unusable or obsolete to the
2 extent that the item is no longer economical or safe for
3 continued use by the body.

4 B. The governing authority shall, as a prerequisite
5 to the disposition of any items of tangible personal property:

6 (1) designate a committee of at least three
7 officials of the governing authority to approve and oversee the
8 disposition; and

9 (2) give notification at least thirty days
10 prior to its action making the deletion by sending a copy of
11 its official finding and the proposed disposition of the
12 property to the state auditor and the appropriate approval
13 authority designated in Section 13-6-2 NMSA 1978, duly sworn
14 and subscribed under oath by each member of the authority
15 approving the action.

16 C. A copy of the official finding and proposed
17 disposition of the property sought to be disposed of shall be
18 made a permanent part of the official minutes of the governing
19 authority and maintained as a public record subject to the
20 Inspection of Public Records Act.

21 D. The governing authority shall dispose of the
22 tangible personal property by negotiated sale to any
23 governmental unit of an Indian nation, tribe or pueblo in New
24 Mexico or by negotiated sale or donation to other state
25 agencies, local public bodies, school districts, state

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1 educational institutions or municipalities or through the
2 central purchasing office of the governing authority by means
3 of competitive sealed bid or public auction or, if a state
4 agency, through the [~~federal property assistance~~] surplus
5 property bureau of the transportation services division of the
6 general services department.

7 E. A state agency shall give the [~~federal property~~
8 ~~assistance~~] surplus property bureau of the transportation
9 services division of the general services department the right
10 of first refusal when disposing of obsolete, worn-out or
11 unusable tangible personal property of the state agency.

12 F. If the governing authority is unable to dispose
13 of the tangible personal property pursuant to Subsection D or E
14 of this section, the governing authority may sell or, if the
15 property has no value, donate the property to any organization
16 described in Section 501(c)(3) of the Internal Revenue Code of
17 1986.

18 G. If the governing authority is unable to dispose
19 of the tangible personal property pursuant to Subsection D, E
20 or F of this section, it may order that the property be
21 destroyed or otherwise permanently disposed of in accordance
22 with applicable laws.

23 H. If the governing authority determines that the
24 tangible personal property is hazardous or contains hazardous
25 materials and may not be used safely under any circumstances,

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1 the property shall be destroyed and disposed of pursuant to
2 Subsection G of this section.

3 I. No tangible personal property shall be donated
4 to an employee or relative of an employee of a state agency,
5 local public body, school district or state educational
6 institution; provided that nothing in this subsection precludes
7 an employee from participating and bidding for public property
8 at a public auction.

9 J. This section shall not apply to any property
10 acquired by a museum through abandonment procedures pursuant to
11 the Abandoned Cultural Properties Act."

12 Section 5. Section 13-6-2 NMSA 1978 (being Laws 1979,
13 Chapter 195, Section 3, as amended) is amended to read:

14 "13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL
15 PUBLIC BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--
16 APPROVAL OF APPROPRIATE APPROVAL AUTHORITY.--

17 A. Providing a written determination has been made,
18 a state agency, local public body, school district or state
19 educational institution may sell or otherwise dispose of real
20 or tangible personal property belonging to the state agency,
21 local public body, school district or state educational
22 institution.

23 B. A state agency, local public body, school
24 district or state educational institution may sell or otherwise
25 dispose of real property:

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1 (1) by negotiated sale or donation to an
2 Indian nation, tribe or pueblo located wholly or partially in
3 New Mexico, or to a governmental unit of an Indian nation,
4 tribe or pueblo in New Mexico, that is authorized to purchase
5 land and control activities on its land by an act of congress
6 or to purchase land on behalf of the Indian nation, tribe or
7 pueblo;

8 (2) by negotiated sale or donation to other
9 state agencies, local public bodies, school districts or state
10 educational institutions;

11 (3) through the central purchasing office of
12 the state agency, local public body, school district or state
13 educational institution by means of competitive sealed bid,
14 public auction or negotiated sale to a private person or to an
15 Indian nation, tribe or pueblo in New Mexico; or

16 (4) if a state agency, through the [~~federal~~
17 ~~property assistance~~] surplus property bureau of the
18 transportation services division of the general services
19 department.

20 C. A state agency shall give the [~~federal property~~
21 ~~assistance~~] surplus property bureau of the transportation
22 services division of the general services department the right
23 of first refusal to dispose of tangible personal property of
24 the state agency. A school district may give the [~~department~~]
25 surplus property bureau the right of first refusal to dispose

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1 of tangible personal property of the school district.

2 D. Except as provided in Section 13-6-2.1 NMSA 1978
3 requiring state board of finance approval for certain
4 transactions, sale or disposition of real or tangible personal
5 property having a current resale value of more than five
6 thousand dollars (\$5,000) may be made by a state agency, local
7 public body, school district or state educational institution
8 if the sale or disposition has been approved by the state
9 budget division of the department of finance and administration
10 for state agencies, the local government division of the
11 department of finance and administration for local public
12 bodies, the public education department for school districts
13 and the [~~commission on~~] higher education department for state
14 educational institutions.

15 E. Prior approval of the appropriate approval
16 authority is not required if the tangible personal property is
17 to be used as a trade-in or exchange pursuant to the provisions
18 of the Procurement Code.

19 F. The appropriate approval authority may condition
20 the approval of the sale or other disposition of real or
21 tangible personal property upon the property being offered for
22 sale or donation to a state agency, local public body, school
23 district or state educational institution.

24 G. The appropriate approval authority may credit a
25 payment received from the sale of such real or tangible

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1 personal property to the governmental body making the sale.
2 The state agency, local public body, school district or state
3 educational institution may convey all or any interest in the
4 real or tangible personal property without warranty.

5 H. This section [~~shall~~] does not apply to:

- 6 (1) computer software of a state agency;
7 (2) those institutions specifically enumerated
8 in Article 12, Section 11 of the constitution of New Mexico;
9 (3) the New Mexico state police division of
10 the department of public safety;
11 (4) the state land office or the department of
12 transportation;
13 (5) property acquired by a museum through
14 abandonment procedures pursuant to the Abandoned Cultural
15 Properties Act;
16 (6) leases of county hospitals with any person
17 pursuant to the Hospital Funding Act;
18 (7) property acquired by the economic
19 development department pursuant to the Statewide Economic
20 Development Finance Act; and
21 (8) the state parks division of the energy,
22 minerals and natural resources department."

23 Section 6. TEMPORARY PROVISION--TRANSFER OF MONEY.--On
24 the effective date of this act, all money in the surplus
25 property revolving fund shall be transferred to the surplus

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property fund.

Section 7. REPEAL.--Sections 15-4-2 and 15-4-3 NMSA 1978
(being Laws 1971, Chapter 189, Sections 2 and 3, as amended)
are repealed.

Section 8. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2007.